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## C. REMARKS

Status of the Claims

Claims 1-20 are currently present in the Application, and claims 1, 8, and 14 are independent claims. Claims 1-9, 12-15, and 18-20 have been amended. Support for these amendments is found throughout Applicants' specification. For example, see Figure 3, reference numeral 300, Figure 4, reference numeral 410, Figure 5, Figure 6, reference numeral 610, Figure 7, reference numeral 710, Figure 8, reference numeral 810, and the accompanying descriptions thereof found in Applicants' specification. No claims have been cancelled and no claims have been added in this Response.

Examiner Interview

Applicants wish to thank the Examiner and the Primary Examiner for the courtesy extended to Applicants' attorney during the telephone interview on Tuesday, December 6, 2005. During the interview, it was agreed that the rejections under 35 U.S.C. § 101 would be withdrawn based on *in re Lundgren*. Applicants' attorney also noted that one of the Walker references does not have a publication date earlier than Applicants' filing date, and the Examiner agreed to look into this matter further. This issue is discussed in detail below.

The rejections under 35 U.S.C. §103 were discussed with regard to the Paizis reference and the Walker references. Applicants' attorney suggested amending Applicants' claims to make it clear that Applicants are analyzing attrition risks on an individual employee basis. Applicants' attorney noted that Paizis does not deal with the issue of analyzing attrition risk, and Walker only discusses employee loyalty in general terms, with regard to large groups of employees. The Examiner noted

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that amending the claims to make it clear that Applicants' claims pertain to individual employees would probably overcome the prior art of record, but that the Examiner would have to do a new search. No agreement was reached regarding the rejections under 35 U.S.C. § 103.

Drawings

Applicants note that the Examiner did not indicate whether the formal drawings, filed with Applicants' application, are accepted by the Examiner. Applicants respectfully request that the Examiner indicate whether the formal drawings filed on June 29, 2001 are accepted in the next office communication.

Claim Rejections Under 35 U.S.C. § 101

Claims 1-7 stand rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter. Applicants respectfully traverse the rejections under 35 U.S.C. § 101.

The Examiner recites a two-prong test for determining whether a claim is statutory under 35 U.S.C. § 101, including 1. whether the invention is within the technological arts, and 2. whether the invention produces a useful, concrete, and tangible result. The Examiner admits that Applicants' claims produce a useful, concrete, and tangible result (see Office Action, page 3, lines 9-12). However, the Examiner rejects claims 1-7 because, according to the Examiner, they do not "apply, involve, use, or advance the technological arts" (see Office Action, page 3, lines 3-8). Applicants respectfully disagree with the Examiner's statement that claims 1-7 do not apply, involve, use, or advance the technological arts. However, in the interest of being as clear as possible, Applicants have amended claims 1-7 to claim "a computer-implemented method."

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In addition, Applicants note that the Board of Patent Appeals and Interferences has recently found that there is no separate "technological arts" test in determining whether a process is statutory subject matter (Ex Parte Lundgren). Therefore, as long as Applicants' claims produce a useful, concrete, and tangible result, which the Examiner has admitted is the case, they are statutory subject matter.

Based on the above, Applicants respectfully request that the Examiner withdraw the rejections under 35 U.S.C. § 101.

Claim Rejections - Alleged Obviousness Under 35 U.S.C. § 103

Claims 1-20 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Paizis, U.S. Patent No. 6,338,042 in view of Walker Information Global Employee Relationship Benchmark Reports from 1999 and 2000 (hereinafter Walker). Applicants respectfully traverse the rejections under 35 U.S.C. § 103(a).

a. The 2000 Walker Reference Cited By The Examiner Is Not Prior Art

Applicants note that the 2000 Walker report does not contain a publication date. However, it does contain a copyright date on the bottom of each page. The copyright reads as follows:

© 2001 Walker Information, Inc.

With no further evidence of an actual publication date, the earliest date that such a copyright date can be relied upon by the Examiner is December 31, 2001. The present Application was filed on June 29, 2001, which is, of course, earlier than December 31, 2001. Therefore, based on the copyright date of the 2000 Walker report, Applicants respectfully submit that the

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2000 Walker report is not proper prior art with regard to Applicants' claimed invention. As this reference has been relied upon by the Examiner to support the rejections of all of Applicants' claims, Applicants respectfully submit that the rejections under 35 U.S.C. § 103(a) can not be maintained, and respectfully request that claims 1-20 be allowed.

**b. Claims 1-20 Are Patentable Over Paizis In View Of Walker**

Notwithstanding the patentability of claims 1-20 based on the above discussion, Applicants further submit that the cited references do not teach or suggest Applicants' invention as claimed. Note that, although Applicants do not believe that the 2000 Walker reference is prior art, Applicants address the Paizis reference, along with both Walker references, in the argument below.

Applicants teach and claim a method, system, and computer program product for analyzing attrition risks for employees. As shown in detail in Figures 7 and 8 of Applicants' specification, attrition risk is determined separately for each employee. Each individual employee is also assigned to a risk quadrant. Using amended, independent claim 1 as an exemplary claim, Applicants claim the following elements in independent claims 1, 8, and 14:

- receiving risk planning factor data from a user, the risk planning factor data corresponding to one or more selected employees;
- storing the risk planning factor data in employee profile data areas, wherein each employee profile data area corresponds to one of the selected employees;
- retrieving actual employment data for each of the selected employees in the employee profile data areas; and

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- analyzing attrition risk for each of the selected employees using the risk planning factor data and the actual employment data, wherein the attrition risk is individually analyzed for each of the selected employees.

Paizis purports to teach a method and apparatus for incorporating competency and contribution measures into pay decisions (see Abstract). The Examiner notes that Paizis does not focus on the risk of employee attrition (see Office Action, page 5, lines 1-2). Paizis is concerned with ranking employees in order to determine the amount of each employees' pay raise (col. 6, line 23 through col. 7, line 40). Applicants teach and claim analyzing attrition risk for employees, which, at some point, may ultimately result in raising an employee's salary, but also involves much more than simply increasing salaries. Paizis does not appear to be concerned with analyzing attrition risk as taught and claimed by Applicants.

The Examiner admits that Paizis does not teach "analyzing attrition risk" as taught and claimed by Applicants, and thus uses Walker in further support of the rejection. However, the Walker references are national and global reports on Employee Loyalty. As stated in the 1999 Walker reference (copyright 2000):

Conducted by Walker Information and Hudson Institute, the 1999 Employee Relationship Benchmark Report represents the attitudes and experiences of US workers from business, government, and non-profit organizations in conterminous forty-eight states. Participants were full- or part-time workers, at least eighteen years old, and from organizations of at least fifty employees. 2,293 self-

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administered questionnaires were returned out of 3,075 mailed, for an atypically high response rate of 75%. The sampling plan represented a cross section of industries, and final total results were weighted to be proportionate according to US labor statistics. Survey results were collected in April and May of 1999.

Similar language is found in the 2000 Walker reference (copyright 2001). It is clear that the Walker references are discussing a survey of employee loyalty. The survey results are discussed throughout the Walker references, as they apply to large groups of employees. On the fourth page of the 1999 Walker reference (in the section titled "Assessing Employee Commitment in Your Organization"), the reference notes "[i]n most cases, you can learn what drives loyalty **across your entire workforce** for less than the cost of replacing a single employee" (emphasis added).

Walker is not concerned with, and does not address the issue of, analyzing attrition risk on an individual basis for individual employees. In particular, Walker does not teach or suggest "**analyzing attrition risk for each of the selected employees** using the risk planning factor data and the actual employment data, **wherein the attrition risk is individually analyzed for each of the selected employees,**" as taught and claimed by Applicants in independent claims 1, 8, and 14. Walker is concerned with overall statistics pertaining to employee loyalty across large groups of people, and not with analyzing the attrition risk of each individual employee. For the reasons set forth above, Applicants respectfully submit that independent claims 1, 8, and 14, and the claims which depend from them, are patentable over Paizis in view of Walker.

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Notwithstanding the patentability of claims 2, 9, and 15 based on the above discussion, Applicants further address the additional elements found in these dependent claims. Using claim 2 as an exemplary claim, claims 2, 9, and 15 include the following elements:

- retrieving motivators and inhibitors included with the risk planning factor data corresponding to the selected employees;
- calculating a flight risk for each of the selected employees based on the motivators and inhibitors, wherein the flight risk is individually calculated for each of the selected employees;
- retrieving contribution data included with the actual employment data corresponding to the selected employees; and
- assigning a risk quadrant from a plurality of risk quadrants to each of the selected employees based on the flight risk and contribution corresponding to each selected employee.

Neither Paizis nor Walker teaches or suggests "calculating a flight risk" for each individual employee. Further, neither Paizis nor Walker teaches or suggests "assigning a risk quadrant" to each employee based on the individually calculated flight risk and contribution corresponding to the employee. Walker discusses, in general terms and across a large number of employees, the percentage of employees who feel loyal to a company and what percentage of employees are likely to leave a company. However, none of the cited references, either alone or

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in combination, teach or suggest calculating a flight risk on an individual employee basis, and then using the flight risk for each individual employee, to assign the employee to a risk quadrant. For the reasons set forth above, Applicants respectfully submit that claims 2, 9, and 15 are patentable over Paizis in view of Walker.

Conclusion

As a result of the foregoing, it is asserted by Applicants that the remaining claims in the Application are in condition for allowance, and Applicants respectfully request an early allowance of such claims.

Applicants respectfully request that the Examiner contact the Applicants' attorney listed below if the Examiner believes that such a discussion would be helpful in resolving any remaining questions or issues related to this Application.

Respectfully submitted,

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